84-1863

No. ———

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

Cross-Petitioners,

v.

ALLIED CORPORATION

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MICHAEL H. HOLLAND
Counsel of Record
EARL V. BROWN, JR.
UNITED MINE WORKERS OF AMERICA
900 - 15th Street, N.W.
Washington, D.C. 20005
(202) 842-7330

DANIEL B. EDELMAN
YABLONSKI, BOTH AND EDELMAN
1140 Connecticut Avenue, N.W.
#800
Washington, D.C. 20036
(202) 833-9060

Attorneys for Cross-Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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QUESTION PRESENTED FOR REVIEW

Whether, in the event the Petition in *Allied Corporation v. District 17, UMWA, et al.*, No. 84-1684, is granted and the *en banc* decision of the Fourth Circuit is reversed, the Court should reinstate the decision of the Fourth Circuit panel holding the UMWA 1974 Benefit Plan and Trust responsible for health and other non-pension benefits of Allied's 1974 pensioners in order to avoid a plainly unjust result.

PARTIES

The parties to the proceeding in the court below were: Allied Corporation ("Allied"), Armco, Inc. ("Armco"), Shannon Pocahontas Coal Company ("Shannon Pocahontas"), District 17, District 29, Local Union 7113, and Local Union 6023 of the United Mine Workers of America ("UMWA"), John Ramey and Joseph McCardle (on behalf of themselves and others similarly situated), and the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust"). This brief is filed on behalf of District 17 and District 29, UMWA, Local Union 7113 and Local Union 6023, UMWA, and John Ramey and Joseph McCardle, on behalf of themselves and others similarly situated. The UMWA Districts and Local Unions are subordinate bodies of the International Union, United Mine Workers of America, all of which are unincorporated associations.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE WRIT IN THE EVENT THE WRIT IN NO. 84-1684 IS GRANTED	4
CONCLUSION	6

TABLE OF AUTHORITIES

Cases

Allied Corp. v. District 17, UMWA, 735 F.2d 121 (4th Cir. 1984), *rev'd en banc* (Petition in No. 84-1684, App. A) (1985)	3, 4, 5

Statutes

28 U.S.C. 1254(1)	2
29 U.S.C. 185(a)	2

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Cross-Petitioners, District 17, District 29, Local Union 7113, and Local Union 6023, United Mine Workers of America and John Ramey and Joseph McCardle, on behalf of themselves and others similarly situated, pray that in the event a writ of certiorari is granted in the matter of *Allied Corp. v. District 17, UMWA, et al.*, Supreme Court Docket No. 84-1684, a writ of certiorari also issue to review the *en banc* decision of the United States Court of Appeals for the Fourth Circuit in this

case insofar as that decision holds that the 1974 Benefit Trust is not responsible for the health and other non-pension benefits of the 1974 pensioners of the Allied Corporation, Petitioner in No. 84-1684.

OPINIONS BELOW

The opinions below are identified in the Petition of Allied Corporation in No. 84-1684 and are included in Appendices A, B, C, D, and E thereto.

JURISDICTION

The final judgment of the court of appeals, reproduced as Appendix E to the Petition in No. 84-1684, was entered on February 11, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Rule 19.5 of the Rules of this Court.

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. 185(a).

STATEMENT

The pertinent facts are stated in the Petition of Allied Corporation, No. 84-1684, except insofar as the Statement therein does not describe the cross-petitioners' claims against the 1974 Benefit Trust.

The Petition in 84-1684 was received
by Counsel for Cross-Petitioners
on April 29, 1985.

Throughout these proceedings, the overriding objective of the cross-petitioners—plaintiffs in the district court—has been to assure the continuation of the health and other non-pension benefits of Allied's 1974 pensioners. The unions and union member plaintiffs asserted primarily that Allied had violated its obligation under Article I of the National Bituminous Coal Wage Agreement of 1978 when it failed to pass on its obligations to provide these benefits to the purchasers of its coal mines—Armco and Shannon Pocahontas—incident to sale of its mines to them in 1980. The district court and the *en banc* Fourth Circuit Court of Appeals agreed that Allied had breached Article I. The district court enjoined Allied to continue to provide the benefits. The Fourth Circuit *en banc* decision sustained the district court's injunction because, in the majority's view, the benefits of Allied's 1974 pensioners would—but for Allied's breach—foreseeably have been carried forward under ensuing collective bargaining agreements. Allied has lodged a Petition for Writ of Certiorari seeking review of that determination, No. 84-1684.

The union and union member plaintiffs contended alternatively in the district court and the court of appeals that responsibility for the continued benefits of Allied's 1974 pensioners should be assigned to the 1974 Benefit Trust. The district court, in enjoining Allied to continue to provide the benefits, rejected the claim against the 1974 Benefit Trust. Allied appealed from the judgment in the district court and the unions and union member plaintiffs pursued a cross-appeal.

The initial panel opinion of the Fourth Circuit, *Allied Corp. v. District 17, UMWA*, 735 F.2d 121 (4th Cir. 1984) (Petition in No. 84-1684, App. B), vacated the district court's injunction against Allied but sustained the union and union members' cross-appeal. The panel assigned responsibility for the 1974 pensioners' continued

benefits to the 1974 Benefit Trust. (Petition in No. 84-1684, App. B, 40a-47a.) On Petition for Rehearing, the Fourth Circuit *en banc* sustained the district court's injunction against Allied and accordingly held that the 1974 Benefit Trust was not responsible for the benefits of Allied's 1974 pensioners.

Cross-petitioners believe that the judgment of the Fourth Circuit based on its *en banc* decision sustaining the injunction against Allied is correct and are satisfied therewith. Further, as set forth in their Brief in Opposition to Petition for Certiorari in No. 84-1684, cross-petitioners submit that the Petition therein states no ground warranting this Court's review.

Cross-petitioners seek modification of the Fourth Circuit's *en banc* decision only conditionally, in the unlikely event that this Court were to reverse the appellate court's decision sustaining the injunction against Allied. In that event, cross-petitioners would contend that responsibility for the continued benefits of Allied's 1974 pensioners should be assigned to the 1974 Benefit Trust, the view taken by the original Fourth Circuit panel and shared by four members of the court sitting *en banc*.

REASONS FOR GRANTING THE WRIT IN THE EVENT THE WRIT IN NO. 84-1684 IS GRANTED

In the event the injunction against Allied were reversed, this Court would most likely remand this matter to the Fourth Circuit for further proceedings not inconsistent with its opinion. Unless this cross-petition is granted and the Fourth Circuit's judgment is vacated insofar as it relieves the 1974 Benefit Trust of responsibility, the Trust would be likely to contend on remand that it was protected by the court of appeals' February 11, 1985, *en banc* judgment insofar as it appears to exonerate them of responsibility.

Such a result was plainly not intended by any member of the Fourth Circuit. Five members of that court adhered to the view stated in the majority opinion of Judge Sprouse (Petition in No. 84-1684, App. A, 4a, *et seq.*) that the district court properly enjoined Allied to continue providing the benefits as a remedy for its contract breach in failing to pass on responsibility for the benefits to its purchasers. Four members of the court joined in the views stated by Judge Chapman in dissenting from the *en banc* majority and incorporating his original panel opinion. (Petition in No. 84-1684, App. A, 20a.)

The Allied Corporation, Petitioner in No. 84-1684, agrees that responsibility for the benefits in question should be assigned to the 1974 Benefit Trust in the event it is relieved of responsibility. Indeed, the principal thrust of Allied's contentions to the Fourth Circuit was that the party properly responsible for the benefits in question was the 1974 Benefit Trust.

Cross-petitioners herein believe the writ in No. 84-1684 should plainly be denied. In the event the writ were granted, this Cross-Petition should also be granted in order to avoid an unjust result not contemplated by any of the parties or by any of the judges below.

CONCLUSION

In the event the Petition for a Writ of Certiorari in No. 84-1684 is granted, this Cross-Petition for Writ of Certiorari should be granted as well.

Respectfully submitted,

MICHAEL H. HOLLAND
Counsel of Record

EARL V. BROWN, JR.
UNITED MINE WORKERS OF AMERICA
900 - 15th Street, N.W.
Washington, D.C. 20005
(202) 842-7330

DANIEL B. EDELMAN
YABLONSKI, BOTH AND EDELMAN
1140 Connecticut Avenue, N.W.
#800
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